IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIAN KISER RODEHEAVER, et al.	*	
	*	
v.	*	Civil No. JFM-06-0957
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HARTFORD INSURANCE COMPANY OF THE MIDWEST, et al.	*	
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MEMORANDUM

This insurance dispute concerns the home of plaintiff Marian Kiser Rodeheaver, which burned to the ground on April 26, 2002. Before me now is the defendants' motion to dismiss or for summary judgment. For the reasons that follow, the motion will be granted.

I.

Rodeheaver is a long-time resident of Grantsville, Maryland, and for years had protected her home with an insurance policy from defendant Hartford Insurance Company of the Midwest ("Hartford Midwest"). (Compl. ¶¶ 1-2, 5). On Friday, April 26, 2002, her home caught fire. (*Id*. ¶ 9). The main dwelling was completely destroyed, as was most of her personal property, though her garage remained largely intact. (*Id*.). Visiting with her that weekend was her son, plaintiff William E. Wright, who had traveled to Grantsville to attend a family funeral. (*Id*. ¶ 8). Wright attempted to extinguish the fire, and in so doing suffered burns to his face. (*Id*. ¶ 24). His mother paid for his medical treatment at Garrett County Memorial Hospital. (*Id*. ¶ 25).

One week later, a Hartford Midwest agent met with Rodeheaver and Wright to survey the damage. (*Id*. ¶ 10). He determined that Rodeheaver's home and personal property were a "total loss." (Rodeheaver Opp. Br. at 32). At his request, Rodeheaver submitted on June 23, 2002 an

estimate of the cost to rebuild her home. (*Id*. at 39). It was not until three months later that the agent notified Rodeheaver that the estimate was defective in certain respects. (*Id*.). Rodeheaver immediately submitted a revised estimate, and beginning on September 23, 2002, Hartford Midwest made the first of numerous payments due Rodeheaver under her policy (which to date have totaled approximately $277,000). (*Id*. at 12, 39; Compl. ¶ 12). By that time, however, the building season had ended. (Rodeheaver Opp. Br. at 40). Construction on Rodeheaver's new home did not commence until mid-August 2003, and it was not completed until March 19, 2004. (*Id*.).

During this almost two-year period after the fire, Rodeheaver continued to claim that Hartford Midwest had undervalued the replacement cost of her home and personal belongings, as well as the damages she suffered as a result of not being able to occupy her home. (*See* Compl. ¶¶ 13-14; *see also* Letter from Rodeheaver to Michael J. Rohan, Property Claim Service Manager, The Hartford (Apr. 9, 2004), Hartford Midwest Br., ex. B). On or about February 13, 2004, Hartford Midwest responded by invoking the following clause in the policy:

> Appraisal. If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the residence premises is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

(Rodeheaver Policy at 11, Compl., ex. A; *see* Letter from Rodeheaver to Rohan). During the initial 20-day period, Rodeheaver responded with two letters but did not name an appraiser. (Hartford Midwest Br. at 3). Over the next few months, Hartford Midwest continued to extend the time period in which Rodeheaver could name an appraiser, but to no avail. (*Id*.). In a letter

dated July 9, 2004, counsel for Hartford Midwest reiterated to Rodeheaver the company's position that an appraisal was the appropriate and most cost-effective means for resolving the dispute. (Letter from George E. Reede, Jr. to Rodeheaver (July 9, 2004), Hartford Midwest Br., ex. H). Rodeheaver did not respond until April 25, 2005, at which point her son, Wright, wrote a letter to the company that stated his mother would not submit to the appraisal process unless the company first provided answers to 49 questions included in the letter. (Letter from Wright to Reede (April 25, 2005), Hartford Midwest Br., ex. I). Hartford Midwest never provided answers, and Rodeheaver never named an appraiser. This action was commenced on March 24, 2006 in the Circuit Court for Garrett County, and removed to this court on April 13.

II.

Included in the complaint are three causes of action: breach of contract, intentional infliction of emotional distress, and "personal injury." With respect to the breach of contract claim, Rodeheaver is seeking compensation for Hartford Midwest's alleged under-valuation of her home, personal property, and loss of use of her home. (Compl. ¶¶ 13-14). As to the intentional infliction of emotional distress claim, Rodeheaver emphasizes that she was 79-years-old at the time of the fire, and alleges that Hartford Midwest's failure to "provide timely directions, consistent information and timely release of funds," (*id*. ¶ 18), particularly its failure to release funds before the building season ended in 2002, (*id*. ¶ 19), caused her "much emotional distress," (*id*. ¶ 22). She is seeking $10 million in damages. (*Id*.). Finally, the "personal injury" claim centers around the injuries Wright suffered when he attempted to extinguish the fire, (*id*. ¶ 24), and is brought pursuant to the following section in Rodeheaver's policy:

> COVERAGE F—Medical Payment to Others
> We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing bodily injury. . . . [T]his coverage applies only: to a person on the insured location with the permission of an insured.

(Rodeheaver Policy at 12). Rodeheaver is seeking $700, the amount she allegedly paid to have Wright treated at Garrett County Memorial Hospital, (*id.* ¶ 25), and Wright is seeking $10,000 for pain and suffering.

In addition to Hartford Midwest, plaintiffs have also named the Hartford Insurance Company ("the Hartford") and Ramani Ayer as defendants for all three causes of action. The Hartford is the parent corporation of Hartford Midwest, and Ramani is the Chairman, President, and CEO of the Hartford.

III.

Rodeheaver's breach of contract claim must fail as a matter of law. The Maryland Court of Appeals has recognized that "under an insurance contract providing that an insured and an insurer shall submit to appraisal when they cannot agree as to the amount of loss, it is the duty of both parties to act in good faith and to make a fair effort to carry out such provision and accomplish its object." *Aetna Cas. & Sur. Co. v. Ins. Comm'r*, 445 A.2d 14, 16 (Md. 1982) (citations omitted). Moreover, "under such an appraisal clause, a determination by the appraisers of the amount of the loss is a condition precedent to a suit on the policy by the insured." *Id.* (citation omitted). Thus, once Hartford Midwest invoked the appraisal clause in Rodeheaver's policy, it was her obligation to take part in the process before bringing suit. (*Id.*; Rodeheaver Policy at 11 ("No action can be brought unless the policy provisions have been complied with

and the action is started within three years after the date of loss."). Her refusal to do so is a bar to this claim.[1]

Likewise, the "personal injury" claim related to Wright's injuries must also fail due to Wright's noncompliance with the express terms of the policy. As a condition to payment, the policy requires an injured person to "[g]ive [Hartford Midwest] written proof of claim, under oath if required, as soon as is practical; and [a]uthorize [Hartford Midwest] to obtain copies of medical reports and records." (Rodeheaver Policy at 17). Yet Wright does not allege that he informed Hartford Midwest of his claim at any point during the almost four years between the fire and his filing of this action, nor does he provide any reasons as to why it was impractical to do so. The claim is therefore dismissed.[2]

IV.

In *Dickson v. Selected Risks Ins. Co.*, 666 F. Supp. 80, 81 (D. Md. 1987), I dismissed as frivolous an intentional infliction of emotional distress claim arising from an insurance dispute, and in so doing made the following observations about the tort:

> [It] is a relatively recent creation of the common law intended to fill a void left by traditional causes of action where substantial emotional injury is caused by outrageous conduct in the absence of physical harm or physical touching. *See Harris v. Jones*, 380 A.2d 611 (Md. 1977). This interstice is narrow but the language used by the Courts to cover it is necessarily broad. Thus, in order to prevent litigation abuse, the trial courts necessarily play a vital role in making a threshold determination of whether a valid claim has been stated. *Borowski v. Vitro Corp*., 634 F. Supp. 252, 258 (D. Md. 1986); *Hamilton v. Ford Motor Credit Co*., 502 A.2d 1057 (Md. Ct. Spec. App. 1986);

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[1] Relying on the fact that the agent who visited her home in May 2002 concluded that everything she owned, save the garage, was a "total loss," Rodeheaver attempts to avoid this outcome by arguing that the appraisal provision is inapplicable because the parties do not actually disagree as to the amount of loss. (Rodeheaver Opp. Br. at 32). However, the agent's characterization of the *nature and extent* of damage is not equivalent to an agreement between the parties as to the *value* of the items damaged.

[2] I also note that plaintiffs' naming of the Hartford and Ayer as defendants for these two contract claims was frivolous. Under Maryland law, "a contract cannot be enforced by or against a person who is not a party to it," *Cecilia Schwaber Trust Two v. Hartford Accident & Indem. Co.*, __ F. Supp. 2d __, 2006 WL 1888691, at *4 (D. Md. 2006), and neither the Hartford nor Ayer were parties to Rodeheaver's policy.

> *cf. Caruso v. Republic Insurance Co.*, 558 F. Supp. 430 (D. Md. 1983). Here, the conduct complained of does not approach the level of outrageousness necessary to sustain an intentional infliction of emotional distress claim. *See generally Hamilton v. Ford Motor Credit Co.*, *supra; Pemberton v. Bethlehem Steel Corp*., 502 A.2d 1101 (Md. Ct. Spec. App.), *cert. denied*, 508 A.2d 488 (Md. 1986); *Leese v. Baltimore County*, 497 A.2d 159 (Md. Ct. Spec. App.), *cert. denied*, 501 A.2d 845 (Md. 1985); *Dick v. Mercantile-Safe Deposit and Trust Co*., 492 A.2d 674 (Md. Ct. Spec. App. 1985).

These observations apply with equal force here. Undoubtedly, the Hartford Midwest agent's failure in the summer of 2002 to timely notify Rodeheaver that her cost estimate was deficient caused her much inconvenience and psychological stress. But there is simply nothing in the complaint or exhibits from which to infer that this failure was intentional, let alone so outrageous as to give rise to tort liability. Accordingly, the claim is dismissed.

In sum, the defendants' motion to dismiss is granted in its entirety. An order implementing this ruling is attached.

Date: July 31, 2006

/s/
J. Frederick Motz
United States District Judge